

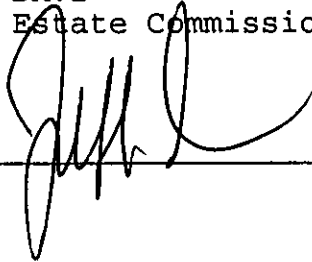
1 card(s) and any branch office license certificate(s) shall be
2 sent to the below listed address so that they reach the
3 Department on or before the effective date of this Order:

4 Department of Real Estate
5 Atten: Licensing Flag Section
6 P.O. Box 187000
7 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock noon
9 on JUNE 11, 2009.

10 DATED: _____ 5-15-09.

11 JEFF DAVI
12 Real Estate Commissioner

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Ex. "A"

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-35195 LA
ELIZABETH TUTTLE,)
Respondent.)

DECLARATION

My name is ELIZABETH TUTTLE, and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by S. Henslee Smith, Esq. in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license, I may be relicensed as a broker or as a salesperson
3 only by petitioning for reinstatement pursuant to Section 11522
4 of the Government Code. I also understand that by so
5 voluntarily surrendering my license(s), I agree to the
6 following:

7 1. The filing of this Declaration shall be deemed as
8 my petition for voluntary surrender.

9 2. It shall also be deemed to be an understanding and
10 agreement by me that I waive all rights I have to require the
11 Commissioner to prove the allegations contained in the Accusation
12 filed in this matter at a hearing held in accordance with the
13 provisions of the Administrative Procedure Act (Government Code
14 Sections 11400 et seq.), and that I also waive other rights
15 afforded to me in connection with the hearing such as the right
16 to discovery, the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 3. I further agree that upon acceptance by the
20 Commissioner, as evidenced by an appropriate order, all
21 affidavits and all relevant evidence obtained by the Department
22 in this matter prior to the Commissioner's acceptance, and all
23 allegations contained in the Accusation filed in the Department
24 Case No. H-35195 LA may be considered by the Department to be
25 true and correct for the purpose of deciding whether to grant
26 relicensure or reinstatement pursuant to Government Code Section
27 11522.

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4. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed 4/5/09, 2009, at Tustin, California.

Elizabeth Tuttle
ELIZABETH TUTTLE

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FILED
APRIL 10, 2009
DEPARTMENT OF REAL ESTATE

By ~~_____~~

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35195 LA
12 PHELAN FINANCIAL SERVICES INC.,) L-2008100920
13)
14 Respondent.)

15 ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

16 On January 20, 2009, an Amended Accusation was filed
17 in this matter against Respondent PHELAN FINANCIAL SERVICES INC.

18 On February 12, 2009, Respondent petitioned the
19 Commissioner to voluntarily surrender its corporation license
20 pursuant to Section 10100.2 of the Business and Professions Code.

21 IT IS HEREBY ORDERED that Respondent PHELAN FINANCIAL
22 SERVICES INC.'s petition for voluntary surrender of its
23 corporation license is accepted as of the effective date of
24 this Order as set forth below, based upon the understanding
25 and agreement expressed in Respondent's Declaration dated
26 February 12, 2009 (attached as Exhibit "A" hereto). Respondent's
27 license certificate(s), pocket card(s) and any branch office

1 license certificate(s) shall be sent to the below listed address
2 so that they reach the Department on or before the effective date
3 of this Order:

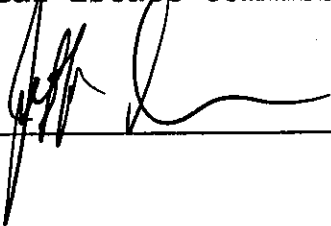
4 Department of Real Estate
5 Atten: Licensing Flag Section
6 P.O. Box 187000
7 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock noon
9 on APRIL 30, 2009.

10 DATED: _____

11 4-8-09

12 JEFF DAVI
13 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35195 LA
)	
PHELAN FINANCIAL SERVICES INC.,)	L-2008100920
)	
)	
Respondent.)	

DECLARATION

My name is DOYLE CLINTON HOWELL, JR., and I am currently an officer of PHELAN FINANCIAL SERVICES INC., which is licensed as a real estate broker and/or has license rights with respect to said license. I am authorized to sign this declaration on behalf of PHELAN FINANCIAL SERVICES INC. I am acting on behalf of PHELAN FINANCIAL SERVICES INC. in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Government Code) PHELAN FINANCIAL SERVICES INC. wishes to voluntarily surrender its real estate license

1 issued by the Department of Real Estate ("Department"), pursuant
2 to Business and Professions Code Section 10100.2.

3 I understand that PHELAN FINANCIAL SERVICES INC., by so
4 voluntarily surrendering its license, can only have it reinstated
5 in accordance with the provisions of Section 11522 of the
6 Government Code. I also understand that by so voluntarily
7 surrendering its license, PHELAN FINANCIAL SERVICES INC. agrees
8 to the following:

9 1. The filing of this Declaration shall be deemed as
10 PHELAN FINANCIAL SERVICES INC.'s petition for voluntary
11 surrender.

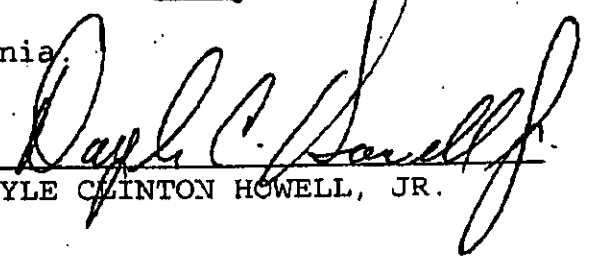
12 2. It shall also be deemed to be an understanding and
13 agreement by PHELAN FINANCIAL SERVICES INC. that it waives all
14 rights it has to require the Commissioner to prove the
15 allegations contained in the Accusation filed in this matter at a
16 hearing held in accordance with the provisions of the
17 Administrative Procedure Act (Government Code Sections 11400 et
18 seq.), and that PHELAN FINANCIAL SERVICES INC. also waives other
19 rights afforded to it in connection with the hearing such as the
20 right to discovery, the right to present evidence in defense of
21 the allegations in the Accusation and the right to cross-examine
22 witnesses.

23 3. I further agree that upon acceptance by the
24 Commissioner, as evidenced by an appropriate order, all
25 affidavits and all relevant evidence obtained by the Department
26 in this matter prior to the Commissioner's acceptance, and all
27 allegations contained in the Accusation filed in the Department

1 Case No. H-35195 LA may be considered by the Department to be
 2 true and correct for the purpose of deciding whether to grant
 3 relicensure or reinstatement pursuant to Government Code Section
 4 11522.

5 4. PHELAN FINANCIAL SERVICES INC. freely and
 6 voluntarily surrenders all licenses and license rights under the
 7 Real Estate Law.

8 I declare under penalty of perjury under the laws of
 9 the State of California that the above is true and correct and
 10 that this declaration was executed Feb. 12, 2009, at
 11 Phelan, California.

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 13 _____
 14 DOYLE CLINTON HOWELL, JR.

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1 sent to the below listed address so that they reach the
2 Department on or before the effective date of this Order:

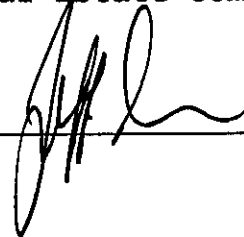
3 Department of Real Estate
4 Atten: Licensing Flag Section
5 P.O. Box 187000
6 Sacramento, CA 95818-7000

7 This Order shall become effective at 12 o'clock noon
8 on APRIL 30, 2009.

9 DATED: _____

4-8-09

10 JEFF DAVI
11 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35195 LA
)	
PHELAN ESCROW INC.,)	L-2008100920
)	
Respondent.)	
)	

DECLARATION

My name is DOYLE CLINTON HOWELL, JR., and I am currently an officer of PHELAN ESCROW INC., which is licensed as a real estate broker and/or has license rights with respect to said license. I am authorized to sign this declaration on behalf of PHELAN ESCROW INC. I am acting on behalf of PHELAN ESCROW INC. in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Government Code) PHELAN ESCROW INC. wishes to voluntarily surrender its real estate license issued by the

1 Department of Real Estate ("Department"), pursuant to Business
2 and Professions Code Section 10100.2.

3 I understand that PHELAN ESCROW INC., by so voluntarily
4 surrendering its license, can only have it reinstated in
5 accordance with the provisions of Section 11522 of the Government
6 Code. I also understand that by so voluntarily surrendering its
7 license, PHELAN ESCROW INC. agrees to the following:

8 1. The filing of this Declaration shall be deemed as
9 PHELAN ESCROW INC.'s petition for voluntary surrender.

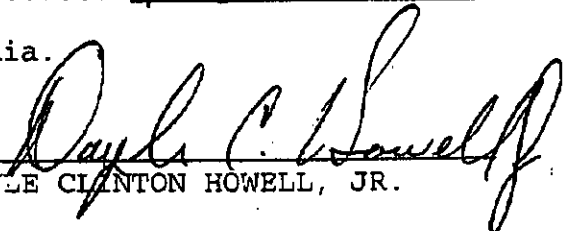
10 2. It shall also be deemed to be an understanding and
11 agreement by PHELAN ESCROW INC. that it waives all rights it has
12 to require the Commissioner to prove the allegations contained in
13 the Accusation filed in this matter at a hearing held in
14 accordance with the provisions of the Administrative Procedure
15 Act (Government Code Sections 11400 et seq.), and that PHELAN
16 ESCROW INC. also waives other rights afforded to it in connection
17 with the hearing such as the right to discovery, the right to
18 present evidence in defense of the allegations in the Accusation
19 and the right to cross-examine witnesses.

20 3. I further agree that upon acceptance by the
21 Commissioner, as evidenced by an appropriate order, all
22 affidavits and all relevant evidence obtained by the Department
23 in this matter prior to the Commissioner's acceptance, and all
24 allegations contained in the Accusation filed in the Department
25 Case No. H-35195 LA may be considered by the Department to be
26 true and correct for the purpose of deciding whether to grant
27

1 relicensure or reinstatement pursuant to Government Code Section
2 11522.

3 4. PHELAN ESCROW INC. freely and voluntarily
4 surrenders all licenses and license rights under the Real Estate
5 Law.

6 I declare under penalty of perjury under the laws of
7 the State of California that the above is true and correct and
8 that this declaration was executed Feb. 12, 2009, at
9 Phelan, California.

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12 DOYLE CLINTON HOWELL, JR.

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FILED
APRIL 10, 2009
DEPARTMENT OF REAL ESTATE

By C.V.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35195 LA
DOYLE CLINTON HOWELL, JR.,)	L-2008100920
)	
)	
Respondent.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On January 20, 2009, an Amended Accusation was filed in this matter against Respondent DOYLE CLINTON HOWELL, JR.

On February 12, 2009, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent DOYLE CLINTON HOWELL, JR.'s petition for voluntary surrender of his real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated February 12, 2009 (attached as Exhibit "A" hereto). Respondent's license

1 certificate(s), pocket card(s) and any branch office license
2 certificate(s) shall be sent to the below listed address so that
3 they reach the Department on or before the effective date of this
4 Order:

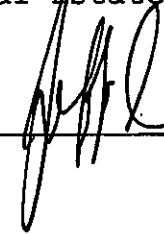
5 Department of Real Estate
6 Atten: Licensing Flag Section
7 P.O. Box 187000
8 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock noon
9 on APRIL 30, 2009.

10 DATED: _____

4-8-09

11
12 JEFF DAVI
13 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35195 LA
DOYLE CLINTON HOWELL, JR.,)	L-2008100920
)	
)	
Respondent.))	

DECLARATION

My name is DOYLE CLINTON HOWELL, JR., and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license, I may be relicensed as a broker or as a salesperson
3 only by petitioning for reinstatement pursuant to Section 11522
4 of the Government Code. I also understand that by so
5 voluntarily surrendering my license(s), I agree to the
6 following:

7 1. The filing of this Declaration shall be deemed as
8 my petition for voluntary surrender.

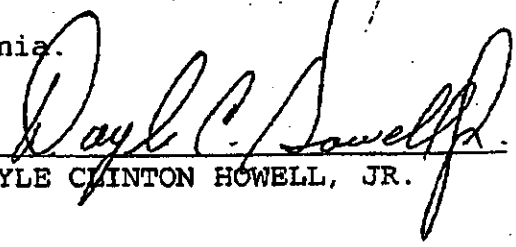
9 2. It shall also be deemed to be an understanding and
10 agreement by me that I waive all rights I have to require the
11 Commissioner to prove the allegations contained in the Accusation
12 filed in this matter at a hearing held in accordance with the
13 provisions of the Administrative Procedure Act (Government Code
14 Sections 11400 et seq.), and that I also waive other rights
15 afforded to me in connection with the hearing such as the right
16 to discovery, the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 3. I further agree that upon acceptance by the
20 Commissioner, as evidenced by an appropriate order, all
21 affidavits and all relevant evidence obtained by the Department
22 in this matter prior to the Commissioner's acceptance, and all
23 allegations contained in the Accusation filed in the Department
24 Case No. H-35195 LA may be considered by the Department to be
25 true and correct for the purpose of deciding whether to grant
26 relicensure or reinstatement pursuant to Government Code Section
27 11522.

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4. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed Feb. 12, 2009, at Phelan, California.


DOYLE CLINTON HOWELL, JR.

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

5 (213) 576-6982
6 (213) 620-6430 (direct)

FILED
JAN. 20, 2009
DEPARTMENT OF REAL ESTATE

By C. [Signature]

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-35195 LA
12)
13 PHELAN FINANCIAL SERVICES INC.;) FIRST AMENDED
14 PHELAN ESCROW INC.; DOYLE CLINTON) A C C U S A T I O N
15 HOWELL, JR., individually and as)
16 designated broker-officer of)
17 Phelan Financial Services Inc. and of)
18 Phelan Escrow Inc.; and)
19 ELIZABETH TUTTLE, individually and as)
20 Designated broker-officer of)
21 Phelan Financial Services Inc.,)
22)
23 Respondents.)

24 The Complainant, Robin Trujillo, a Deputy Real Estate
25 Commissioner of the State of California, does hereby amend the
26 Accusation in this matter filed on August 8, 2008, and for cause
27 of Accusation against PHELAN FINANCIAL SERVICES INC., PHELAN
ESCROW INC., DOYLE CLINTON HOWELL, JR., individually and as
designated broker-officer of Phelan Financial Services Inc., and
Phelan Escrow Inc., and ELIZABETH TUTTLE individually and as
former designated broker-officer of Phelan Financial Services
Inc., and Phelan Escrow Inc. (hereinafter "Respondents"), is

1 informed and hereby alleges as follows:

2 1.

3 The Complainant, Robin Trujillo, a Deputy Real Estate
4 Commissioner of the State of California, makes this Accusation in
5 her official capacity.

6 2.

7 Respondent PHELAN FINANCIAL SERVICES INC. (hereinafter
8 "PHELAN FINANCIAL"), is presently licensed and at all times
9 relevant herein was licensed under the Real Estate Law, Part 1 of
10 Division 4 of the California Business and Professions Code
11 (hereinafter "Code") as a corporate real estate broker.
12 Respondent PHELAN FINANCIAL has been licensed by the Department
13 of Real Estate of the State of California (hereinafter
14 "Department") as a corporate real estate broker since on or about
15 December 8, 2001. From November 3, 2003, and continuing through
16 on or about June 27, 2006, Respondent PHELAN FINANCIAL was
17 authorized to act by and through Respondent ELIZABETH TUTTLE as
18 the designated officer and broker responsible, pursuant to the
19 provisions of Code Section 10159.2 for the supervision and
20 control of the activities conducted on behalf of PHELAN FINANCIAL
21 by PHELAN FINANCIAL's officers and employees. Beginning on or
22 about June 28, 2006, and continuing to the present, Respondent
23 PHELAN FINANCIAL was authorized to act by and through Respondent
24 DOYLE CLINTON HOWELL, JR. as its designated broker-officer.

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3.

1
2 Respondent PHELAN ESCROW INC. (hereinafter "PHELAN
3 ESCROW"), is presently licensed and at all times relevant herein
4 was licensed under the real estate law as a corporate real estate
5 broker. Respondent PHELAN ESCROW has been licensed by the
6 Department as a corporate real estate broker since on or about
7 August 22, 2003. Between on or about August 22, 2003, and
8 continuing through on or about May 2, 2006, Respondent PHELAN
9 ESCROW was authorized to act by and through Respondent ELIZABETH
10 TUTTLE as its designated broker-officer. Beginning on or about
11 May 2, 2006, and continuing to the present, Respondent PHELAN
12 ESCROW was and is authorized to act by and through Respondent
13 DOYLE CLINTON HOWELL, JR. as its designated broker-officer.
14

4.

15
16 Respondent DOYLE CLINTON HOWELL, JR. (hereinafter
17 "HOWELL"), is licensed and at all times relevant herein was
18 licensed under the Code as a real estate broker. Respondent
19 HOWELL has been licensed by the Department as a real estate
20 broker since on or about May 2, 2006. Beginning on or about
21 May 2, 2006, and continuing to the present, Respondent HOWELL was
22 and is the designated broker-officer of Respondent PHELAN ESCROW,
23 responsible for the supervision and control of the activities
24 conducted on behalf of PHELAN ESCROW by PHELAN ESCROW's officers
25 and employees. Beginning on or about June 28, 2006, and
26 continuing to the present, Respondent HOWELL was and is the
27

1 designated broker-officer of Respondent PHELAN FINANCIAL.

2 5.

3 Respondent ELIZABETH TUTTLE (hereinafter "TUTTLE") was
4 and is licensed or has licensed rights as a real estate broker.
5 Respondent TUTTLE was first licensed by the Department in 1970.
6 Between on or about August 22, 2003 and May 2, 2006, Respondent
7 TUTTLE was the designated broker-officer of Respondent PHELAN
8 ESCROW responsible for the supervision and control of the
9 activities conducted on behalf of PHELAN ESCROW by PHELAN
10 ESCROW's officers and employees. Between on or about November 3,
11 2003 and June 27, 2006, Respondent TUTTLE was the designated
12 broker-officer of Respondent PHELAN FINANCIAL.

13 6.

14 At all times material herein, Respondents engaged in
15 the business of, acted in the capacity of, advertised or assumed
16 to act as real estate brokers in the State of California within
17 the meaning of Code Section 10131(d), for another or others in
18 expectation of compensation. Said activity included representing
19 borrowers and lenders of loans secured by real property, and
20 performing loan servicing and escrow activities in relation to
21 those loans pursuant to the exemption set forth in Financial Code
22 Section 17006(a)(4).
23

24 7.

25 All further references to "Respondents" include the
26 individuals listed in Paragraphs 2 through 5 above as well as the
27

1 employees, agents and real estate licensees employed by or
2 associated with each Respondent, who at all times material herein
3 were engaged in the furtherance of the business or operations of
4 said parties and who were acting within the course and scope of
5 their authority, agency or employment.

6 FIRST CAUSE OF ACCUSATION: PHELAN FINANCIAL SERVICES

7 (Audit No. LA 070015)

8 8.

9 During the period between April 1, 2005 and July 31,
10 2007, in connection with the aforesaid real estate mortgage loan
11 activities, Respondents PHELAN FINANCIAL, HOWELL and TUTTLE,
12 accepted or received funds, including funds in trust (hereinafter
13 "trust funds") from or on behalf of actual and prospective
14 lenders and borrowers on loans secured by real property, and made
15 deposits and/or disbursements of such funds. In connection with
16 the mortgage loan brokering activities, Respondents did not
17 maintain a trust account during the audit period.

18 9.

19 On or about September 12, 2007, the Department
20 completed its examination of Respondent PHELAN FINANCIAL's books
21 and records pertaining to the real estate activities described in
22 Paragraph 6 above, covering a period from approximately April 1,
23 2005 to July 31, 2007. The primary purpose of the examination
24 was to determine Respondent's compliance with the Real Estate
25 Law. The examination, Audit No. LA 070015, revealed violations
26
27

1 of the Code, and of Title 10, Chapter 6, California Code of
2 Regulations (hereinafter "Regulations"), as set forth below and
3 as more specifically set forth in the Audit Reports and Exhibits
4 attached thereto.

5 10.

6 In the course of activities described in Paragraph 6
7 above, and during the examination period described in Paragraph
8 9, Respondents acted in violation of the Code and the Regulations
9 in that:

10 a) PHELAN FINANCIAL collected trust funds in the form
11 of credit report fees from lenders on behalf of the borrowers and
12 deposited such funds into the general account, then made payments
13 to the service providers from the general account. In four
14 sampled transactions, PHELAN FINANCIAL charged the borrowers for
15 credit report fees in excess of the amount billed by the credit
16 reporting company and there was no evidence that PHELAN FINANCIAL
17 disclosed the extra fees to the borrowers. The following are
18 examples:
19

<u>Borrower</u>	<u>Date Loan Funded</u>	<u>Credit Report Fees Recd.</u>	<u>Fees Charged</u>	<u>Bal.</u>
22 G. Lombardi	1/24/07	\$60.00	\$19.60	\$40.40
23 D.A. Baker	6/27/06	\$60.00	\$18.00	\$42.00
24 H. Williams	6/28/06	\$60.00	\$29.00	\$30.40
25 F. Kent	3/10/06	\$60.00	\$18.00	\$42.00

26
27 Commingling of trust funds with general funds was in

1 violation of Code Sections 10145 and 10176(e) and Regulation
2 2832. Failure to disclose the amount of fees collected in excess
3 of what was charged constituted a secret profit or undisclosed
4 compensation, in violation of Code Section 10176(g).

5 b) Respondent PHELAN FINANCIAL did not maintain a
6 columnar record for the credit report fees that were collected
7 from the escrow companies, in violation of Code Section 10145 and
8 Regulation 2831.

9 c) Respondent PHELAN FINANCIAL did not maintain a
10 separate record for each loan transaction for the credit report
11 fees that were collected from the escrow companies, in violation
12 of Code Section 10145 and Regulation 2831.1.

13 d) In nine out of the seventeen files examined,
14 Respondent PHELAN FINANCIAL failed to disclose the yield spread
15 premium (rebate) paid by the lender on the Mortgage Loan
16 Disclosure Statement (MLDS). In addition, in five of the files
17 examined, PHELAN FINANCIAL did not retain a complete copy of the
18 DRE approved MLDS as signed by the broker and/or his
19 representatives. Examples include:

21 Borrower	MLDS	YSP	Date	Amt. Pd.
22 Lombardi	No	No	10/02/06	\$11,400.00
Hudson	Yes	No	10/24/06	\$ 4,407.03
23 Neavill	Yes	No	6/15/07	\$ 2,689.11
24 Cook	No	No	2/21/07	\$ 3,100.83

25 Failure to disclose rebates paid by lenders and to
26 provide and retain copies of properly signed MLDS forms in
27

1 transaction files is in violation of Code Section 10240(a) and
2 Regulation 2840.

3 e) In files in which the MLDS was provided, Respondent
4 PHELAN FINANCIAL failed to disclose the corporate license number,
5 in violation of Code Section 10236.4.

6 11.

7 The conduct, acts and/or omissions of Respondents
8 PHELAN FIANCIAL and HOWELL, as described in Paragraph 10, above,
9 violated the Code and Regulations in the following ways:

10	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11	10(a)	Code Sections 10145, 10176(e)
12		and 10176(g); and Regulation
13		2832.
14	10(b)	Code Section 10145 and
15		Regulation 2831.
16	10(c)	Code Section 10145 and
17		Regulation 2831.1.
18	10(d)	Code Section 10240(a) and
19		Regulation 2840.
20	10(e)	Code Section 10236.4.

21 The foregoing violations constitute cause for the
22 suspension or revocation of the real estate licenses and license
23 rights of Respondent PHELAN FINANCIAL, Respondent HOWELL, and
24 Respondent TUTTLE under the provisions of Code Sections 10177(d),
25 10176(g), 10176(e) and 10177(g).

26 12.

27 The violations set forth above constitute cause for the
suspension or revocation of Respondent HOWELL's and Respondent

1 TUTTLE's real estate licenses and/or license rights, as the
2 broker-officers of Respondent PHELAN FINANCIAL, for failing to
3 supervise the activities of the corporation, in violation of Code
4 Sections 10159.2, in conjunction with 10177(h), 10177(d) and
5 10177(g).

6 13.

7 The conduct, acts and omissions set forth in Paragraphs
8 10 (a), (d) and (e) above, in commingling trust funds, charging
9 borrowers amounts in excess of cost for credit reports without
10 disclosing the profit, failing to disclose rebates paid to
11 Respondents by lenders, and failing to make other required
12 mortgage loan disclosures, constitutes dishonest dealing and is
13 grounds to suspend or revoke the license and license rights of
14 Respondent HOWELL pursuant to Code Section 10176(i).

15 SECOND CAUSE OF ACCUSATION: PHELAN ESCROW INC.

16 (Audit No. LA 070016)

17 14.

18 During the period between April 1, 2005 and July 31,
19 2007, in connection with the aforesaid real estate escrow
20 activities, Respondents PHELAN ESCROW, HOWELL and TUTTLE,
21 accepted or received funds, including trust funds from or on
22 behalf of actual and prospective lenders and borrowers on loans
23 secured by real property, and made deposits and/or disbursements
24 of such funds. From time to time herein mentioned, said trust
25 funds were deposited into an account maintained by Respondents at
26
27

1 Citizens Business Bank, located at 12380 Hesperia Road, Suite 1,
2 Victorville, California 92392, identified as follows:

3 Account No. 251227187, entitled, "Phelan Escrow Inc."
4 (hereinafter referred to as "Trust Account"). During the audit
5 period, this account was maintained for the receipts and
6 disbursements of trust funds received in connection with PHELAN
7 ESCROW's escrow activity. There were two signatories on the
8 account, Respondent DOYLE C. HOWELL, JR. and CANDANCE HOWELL.
9 One signature was required to withdraw or disburse funds from
10 this account.

11 15.

12 On or about September 12, 2007, the Department
13 completed its examination of Respondent PHELAN ESCROW's books and
14 records pertaining to the real estate activities described in
15 Paragraph 6 above, covering a period from approximately April 1,
16 2005 to July 31, 2007. The primary purpose of the examination
17 was to determine Respondent's compliance with the Real Estate
18 Law. The examination, Audit No. LA 070016 revealed violations of
19 the Code and Regulations, as set forth below and as more
20 specifically set forth in the Audit Reports and Exhibits attached
21 thereto.
22

23 16.

24 In the course of activities described in Paragraph 6
25 above, and during the examination period described in Paragraph
26 15, Respondents acted in violation of the Code and the
27

1 Regulations in that:

2 a) As of July 31, 2007, there was a shortage in the
3 trust account of \$26,457.93, and the owners of the trust funds
4 did not give Respondents written consent to allow them to reduce
5 the balance of funds in the trust account to an amount less than
6 the aggregate trust fund liabilities. This shortage was due to
7 bank charges totaling \$17,715.35, a negative balance of accounts
8 totaling \$3,332.58, and conversion of trust funds totaling
9 \$5,410.00. There were also broker funds of \$15,000.00 in the
10 trust account, and unaccounted for funds of \$444.55. There was
11 no evidence in the files examined that the owners of the trust
12 funds had given Respondents written consent to allow Respondents
13 to reduce the balance of funds in the trust account to an amount
14 less than the aggregate trust fund liabilities. This mishandling
15 of trust funds was in violation of Code Section 10145 and
16 Regulations 2832.1, 2950(d) and 2951.

17
18 b) On April 11, 2007, Respondents deposited trust
19 funds in the amount of \$8,000.00 into their general business
20 account. On April 30, the balance in the general account was
21 \$662.24, on May 7, 2007, the balance in the general account was
22 \$572.85, on June 4, 2007, the balance in the general account was
23 \$308.90, and on July 27, 2007, the balance in the general account
24 was \$163.77. Funds were deposited back into the trust account on
25 June 6, 2007 (\$2590.00) and August 3, 2007 (\$5,410.00). In
26 addition, Respondent HOWELL kept \$15,000.00 of his own funds in
27

1 the trust account. Commingling and conversion of trust funds was
 2 in violation of Code Sections 10145 and 10176(e), and Regulations
 3 2835, 2950(d) and 2951.

4 c) The control records (Receipt Register, Check
 5 Register and Wire Register) maintained of all the receipts and
 6 disbursements of trust funds in connection with the broker escrow
 7 activity were inaccurate and incomplete. Some of the receipts
 8 deposited into the trust account and some of the disbursements
 9 made from the trust account were not recorded in the control
 10 records at all. In addition, some of the receipts and
 11 disbursements were not recorded correctly in the control records.

12 Examples included:

13 Receipts/Disbursements Not Recorded:

14 Amount	15 Date of Dep. Or Disbursement.	16 Type of Trans.	17 Escrow No.
18 \$ 2,590.00	19 6/6/2007	20 Deposit	21 None
22 \$ 8,000.00	23 4/11/2007	24 Wire Out	25 None
26 \$ 2,450.00	27 7/19/2007	Wire Out	DM070351
\$200,090.81	5/31/2006	Wire in	DM060235

Dates of Receipts/Disbursements Not Recorded Correctly:

21 Amount	22 Date of Dep./ Disb.	23 Date Posted	24 Type	25 Escrow No.
26 \$ 1,000.00	27 4/4/2007	(7/31/2007)	Wire in	DM070320
\$ 83,901.53	1/30/2006	(2/6/2006)	Wire out	JP060217
\$ 13,000.00	1/31/2006	(2/6/2006)	Wire out	JP060217

1 Failure to maintain proper control records was in
2 violation of Code Section 10145 and Regulations 2831, 2950(d) and
3 2951.

4 d) The separate records of receipts and disbursements
5 of trust funds for each beneficiary or transaction in connection
6 with the escrow activity were inaccurate and incomplete.
7 Examples include the transactions listed in subsection (c) above.
8 This was in violation of Code Section 10145 and Regulations
9 2831.1, 2950(d) and 2951.

10 e) Respondents failed to maintain a monthly
11 reconciliation of all the separate records to the control records
12 of all trust funds received and disbursed for the broker escrow
13 activity, in violation of Code Section 10145 and Regulations
14 2831.2, 2950(d) and 2951.

15 f) According to the bank signature card provided for
16 the trust account, at the time of the audit, the bank account was
17 not designated as a trust account, in violation of Code Section
18 10145 and 2832.

19 g) Respondents allowed Candance Howell (Respondent
20 HOWELL's wife), who was unlicensed and was not an employee of
21 Respondents, to be a signatory on the trust account. The
22 fidelity bond coverage was not adequate to cover the maximum
23 amount of trust funds to which the unlicensed, non-employee had
24 access at any given time. In addition, Respondent TUTTLE was not
25 a signer on the account during the time in which she was a
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1 designated broker. These trust account violations were in
2 violation of Code section 10145 and Regulations 2834, 2950(d) and
3 2951.

4 h) Respondents engaged in an earnings credit
5 relationship with the bank whereby Respondents received bank
6 charge offsets on the basis of the deposit of escrow trust funds.
7 These profits were not disclosed to the owners of the trust
8 funds. Examples included an earnings credit of \$204.56 in April
9 of 2007, of \$93.36 in May of 2007, of 73.63 in June of 2007 and
10 of \$51.31 in July of 2007. This secret profit was in violation
11 of Code Section 10176(g).

12 i) Respondents used the unlicensed fictitious business
13 name of "Phelan Escrow" in connection with the broker escrow
14 activity during the audit period without first obtaining a
15 license from the Department bearing that fictitious name, in
16 violation of Code Section 10159.5 and Regulation 2731.

17 j) Respondents failed to advise all parties in writing
18 of its ownership interest in the escrow division when the escrow
19 instructions were provided, in violation of Regulation 2950(h).
20

21 17.

22 The conduct, acts and/or omissions of Respondents
23 PHELAN ESCROW, HOWELL and TUTTLE, as set forth in Paragraph 16
24 above, violated the Code and Regulations as follows:

25 PARAGRAPH

PROVISIONS VIOLATED

26 16(a)

Code Section 10145 and
27 Regulations 2832.1,

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- 2950(d) and 2951
- 16(b) Code Sections 10145 and 10176(e) and Regulations 2835, 2930(d) and 2951
- 16(c) Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
- 16(d) Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
- 16(e) Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
- 16(f) Code Section 10145 and Regulation 2832
- 16(g) Code Section 10145 and Regulations 2834, 2950(d) and 2951
- 16(h) Code Section 10176(g)
- 16(i) Code Section 10159.5 and Regulation 2731
- 16(j) Regulation 2950(h)

The foregoing violations constitute grounds to discipline each Respondent's license and/or license rights pursuant to Business and Professions Code Section 10177(d), 10176(e), 10176(g) and/or 10177(g).

Failure to Supervise

18.

The conduct, acts and/or omissions set forth in Paragraphs 10 and 16 constitute grounds to discipline the licenses and license rights of Respondent HOWELL and Respondent

1 TUTTLE for failure to supervise the activities of PHELAN ESCROW
2 to ensure compliance with the real estate laws, pursuant to Code
3 Section 10177(h) and/or 10177(g).

4 19.

5 The conduct, acts and/or omissions set forth in
6 Paragraph 16 constitute grounds to discipline the licenses and
7 license rights of Respondent HOWELL for commingling, fraud and
8 dishonest dealing, pursuant to Code Sections 10176(e) and
9 10176(i).

10 THIRD CAUSE OF ACCUSATION

11 (Suspension of Corporation)

12 20.

13 On or about February 1, 2008, pursuant to the
14 provisions of Section 23302 of the California Revenue and
15 Taxation Code, the rights and privileges of Respondent PHELAN
16 ESCROW INC. were suspended by the California Secretary of State.

17 21.

18 The suspension of Respondent PHELAN ESCROW INC. by the
19 California Secretary of State constitutes grounds to suspend or
20 revoke Respondent PHELAN ESCROW INC.'s corporate real estate
21 broker license pursuant to Code Sections 10177(d), 10177(f),
22 and/or 10177(g) in conjunction with Regulation 2742.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 PHELAN FINANCIAL SERVICES INC., Respondent PHELAN ESCROW, INC.,
6 Respondent DOYLE CLINTON HOWELL, JR. and Respondent ELIZABETH
7 TUTTLE under the Real Estate Law and for such other and further
8 relief as may be proper under applicable provisions of law.

9 Dated at Los Angeles, California .

10 this 15 day of January, 2009.
11

12
13 
14 Deputy Real Estate Commissioner

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22 cc: Phelan Financial Services, Inc.
23 Phelan Escrow, Inc.
24 Doyle Clinton Howell, Jr.
25 Elizabeth Tuttle
26 Sacto.
27 Robin Trujillo
L.A. Audits (Wanis)
OAH

1 1.

2 The Complainant, Robin Trujillo, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation in
4 her official capacity.

5 2.

6 Respondent PHELAN FINANCIAL SERVICES INC. (hereinafter
7 "PHELAN FINANCIAL"), is presently licensed and at all times
8 relevant herein was licensed under the Real Estate Law, Part 1 of
9 Division 4 of the California Business and Professions Code
10 (hereinafter "Code") as a corporate real estate broker.
11 Respondent PHELAN FINANCIAL has been licensed by the Department
12 of Real Estate of the State of California (hereinafter
13 "Department") as a corporate real estate broker since on or about
14 December 8, 2001. From November 3, 2003, and continuing through
15 on or about June 27, 2006, Respondent PHELAN FINANCIAL was
16 authorized to act by and through Respondent ELIZABETH TUTTLE as
17 the designated officer and broker responsible, pursuant to the
18 provisions of Code Section 10159.2 for the supervision and
19 control of the activities conducted on behalf of PHELAN FINANCIAL
20 by PHELAN FINANCIAL's officers and employees. Beginning on or
21 about June 28, 2006, and continuing to the present, Respondent
22 PHELAN FINANCIAL was authorized to act by and through Respondent
23 DOYLE CLINTON HOWELL, JR. as its designated broker-officer.
24

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3.

1 Respondent PHELAN ESCROW INC. (hereinafter "PHELAN
2 ESCROW"), is presently licensed and at all times relevant herein
3 was licensed under the Real Estate Law as a corporate real estate
4 broker. Respondent PHELAN ESCROW has been licensed by the
5 Department as a corporate real estate broker since on or about
6 August 22, 2003. Between on or about August 22, 2003, and
7 continuing through on or about May 2, 2006, Respondent PHELAN
8 ESCROW was authorized to act by and through Respondent ELIZABETH
9 TUTTLE as its designated broker-officer. Beginning on or about
10 May 2, 2006, and continuing to the present, Respondent PHELAN
11 ESCROW was and is authorized to act by and through Respondent
12 DOYLE CLINTON HOWELL, JR. as its designated broker-officer.
13
14

4.

15 Respondent DOYLE CLINTON HOWELL, JR. (hereinafter
16 "HOWELL"), is licensed and at all times relevant herein was
17 licensed under the Code as a real estate broker. Respondent
18 HOWELL has been licensed by the Department as a real estate
19 broker since on or about May 2, 2006. Beginning on or about
20 May 2, 2006, and continuing to the present, Respondent HOWELL was
21 and is the broker-officer of Respondent PHELAN ESCROW, designated
22 pursuant to Code Section 10159.2 to be responsible for the
23 supervision and control of the activities conducted on behalf of
24 PHELAN ESCROW by PHELAN ESCROW's officers and employees.
25 Beginning on or about June 28, 2006, and continuing to the
26
27

1 present, Respondent HOWELL was and is the designated broker-
2 officer of Respondent PHELAN FINANCIAL.

3 5.

4 Respondent ELIZABETH TUTTLE (hereinafter "TUTTLE") was
5 and is licensed or has licensed rights as a real estate broker.
6 Respondent TUTTLE was first licensed by the Department in 1970.
7 Between on or about August 22, 2003 and May 2, 2006, Respondent
8 TUTTLE was the broker-officer of Respondent PHELAN ESCROW
9 designated pursuant to Code Section 10159.2 to be responsible for
10 the supervision and control of the activities conducted on behalf
11 of PHELAN ESCROW by PHELAN ESCROW's officers and employees.
12 Between on or about November 3, 2003 and June 27, 2006,
13 Respondent TUTTLE was the designated broker-officer of Respondent
14 PHELAN FINANCIAL.

15 6.

16
17 At all times material herein, Respondents engaged in
18 the business of, acted in the capacity of, advertised or assumed
19 to act as real estate brokers in the State of California within
20 the meaning of Code Section 10131(d), for another or others in
21 expectation of compensation. Said activity included representing
22 borrowers and lenders of loans secured by real property, and
23 performing loan servicing and escrow activities in relation to
24 those loans pursuant to the exemption set forth in Financial Code
25 Section 17006(a)(4).

26 ///

7.

1 All further references to "Respondents" include the
2 individuals listed in Paragraphs 2 through 6 above as well as the
3 employees, agents and real estate licensees employed by or
4 associated with each Respondent, who at all times material herein
5 were engaged in the furtherance of the business or operations of
6 said parties and who were acting within the course and scope of
7 their authority, agency or employment.
8

9 FIRST CAUSE OF ACCUSATION: PHELAN FINANCIAL SERVICES

10 (Audit No. LA 070015)

11 8.

12 During the period between April 1, 2005 and July 31,
13 2007, in connection with the aforesaid real estate mortgage loan
14 activities, Respondents PHELAN FINANCIAL, HOWELL and TUTTLE,
15 accepted or received funds, including funds in trust (hereinafter
16 "trust funds") from or on behalf of actual and prospective
17 lenders and borrowers on loans secured by real property, and made
18 deposits and/or disbursements of such funds. In connection with
19 the mortgage loan brokering activities, Respondents did not
20 maintain a trust account during the audit period.
21

22 9.

23 On or about September 12, 2007, the Department
24 completed its examination of Respondent PHELAN FINANCIAL's books
25 and records pertaining to the real estate activities described in
26 Paragraphs 2 and 6 above, covering a period from approximately
27

1 April 1, 2005 to July 31, 2007. The primary purpose of the
2 examination was to determine Respondent's compliance with the
3 Real Estate Law. The examination, Audit No. LA 070015, revealed
4 violations of the Code, and of Title 10, Chapter 6, California
5 Code of Regulations (hereinafter "Regulations"), as set forth
6 below and as more specifically set forth in the Audit Reports and
7 Exhibits attached thereto.

8 10.

9 In the course of activities described in Paragraphs 2
10 and 6 above, and during the examination period described in
11 Paragraph 9, Respondents acted in violation of the Code and the
12 Regulations in that:

13 a) PHELAN FINANCIAL collected trust funds in the form
14 of credit report fees from lenders on behalf of the borrowers and
15 deposited such funds into the general account, then made payments
16 to the service providers from the general account. In four
17 sampled transactions, PHELAN FINANCIAL charged the borrowers for
18 credit report fees in excess of the amount billed by the credit
19 reporting company and there was no evidence that PHELAN FINANCIAL
20 disclosed the extra fees to the borrowers. The following are
21 examples:
22

<u>Borrower</u>	<u>Date Loan Funded</u>	<u>Credit Report Fees Recd.</u>	<u>Fees Charged</u>	<u>Bal.</u>
G. Lombardi	1/24/07	\$60.00	\$19.60	\$40.40
D.A. Baker	6/27/06	\$60.00	\$18.00	\$42.00

1	H. Williams	6/28/06	\$60.00	\$29.00	\$30.40
2	F. Kent	3/10/06	\$60.00	\$18.00	\$42.00

3 Commingling of trust funds with general funds was in
4 violation of Code Sections 10145 and 10176(e) and Regulation
5 2832. Failure to disclose the amount of fees collected in excess
6 of what was charged constituted a secret profit or undisclosed
7 compensation, in violation of Code Section 10176(g).

8
9 b) Respondent PHELAN FINANCIAL did not maintain a
10 columnar record for the credit report fees that were collected
11 from the escrow companies, in violation of Code Section 10145 and
12 Regulation 2831.

13 c) Respondent PHELAN FINANCIAL did not maintain a
14 separate record for each loan transaction for the credit report
15 fees that were collected from the escrow companies, in violation
16 of Code Section 10145 and Regulation 2831.1.

17 d) In nine out of the seventeen files examined,
18 Respondent PHELAN FINANCIAL failed to disclose the yield spread
19 premium (rebate) paid by the lender on the Mortgage Loan
20 Disclosure Statement (MLDS). In addition, in five of the files
21 examined, PHELAN FINANCIAL did not retain a complete copy of the
22 DRE approved MLDS as signed by the broker and/or his
23 representatives. Examples include:

24	Borrower	MLDS	YSP	Date	Amt. Pd.
25	<hr/>				
26	Lombardi	No	No	10/02/06	\$11,400.00
27	Hudson	Yes	No	10/24/06	\$ 4,407.03

1	Neavill	Yes	No	6/15/07	\$ 2,689.11
	Cook	No	No	2/21/07	\$ 3,100.83

2
3 Failure to disclose rebates paid by lenders and to
4 provide and retain copies of properly signed MLDS forms in
5 transaction files is in violation of Code Section 10240(a) and
6 Regulation 2840.

7 e) In files in which the MLDS was provided, Respondent
8 PHELAN FINANCIAL failed to disclose the corporate license number,
9 in violation of Code Section 10236.4.

10 11.

11 The conduct, acts and/or omissions of Respondents
12 PHELAN FIANCIAL and HOWELL, as described in Paragraph 10, above,
13 violated the Code and Regulations in the following ways:

14	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
15	10(a)	Code Sections 10145, 10176(e)
16		and 10176(g); and Regulation
17		2832.
18	10(b)	Code Section 10145 and
19		Regulation 2831.
20	10(c)	Code Section 10145 and
21		Regulation 2831.1.
22	10(d)	Code Section 10240(a) and
23		Regulation 2840.
24	10(e)	Code Section 10236.4.

24 The foregoing violations constitute cause for the
25 suspension or revocation of the real estate licenses and license
26 rights of Respondent PHELAN FINANCIAL, Respondent HOWELL, and
27 Respondent TUTTLE under the provisions of Code Sections 10177(d),

10176(g), 10176(e) and 10177(g).

12.

The violations set forth above constitute cause for the suspension or revocation of Respondent HOWELL's real estate license and/or license rights, as the broker-officer of Respondent PHELAN FINANCIAL, for failing to supervise the activities of the corporation, in violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and 10177(g).

SECOND CAUSE OF ACCUSATION: PHELAN ESCROW INC.

(Audit No. LA 070016)

13.

During the period between April 1, 2005 and July 31, 2007, in connection with the aforesaid real estate escrow activities, Respondents PHELAN ESCROW, HOWELL and TUTTLE, accepted or received funds, including trust funds from or on behalf of actual and prospective lenders and borrowers on loans secured by real property, and made deposits and/or disbursements of such funds. From time to time herein mentioned, said trust funds were deposited into an account maintained by Respondents at Citizens Business Bank, located at 12380 Hesperia Road, Suite 1, Victorville, California 92392, identified as follows:

Account No. 251227187, entitled, "Phelan Escrow Inc." (hereinafter referred to as "Trust Account"). During the audit period, this account was maintained for the receipts and disbursements of trust funds received in connection with PHELAN

1 ESCROW's escrow activity. There were two signatories on the
2 account, Respondent DOYLE C. HOWELL, JR. and CANDANCE HOWELL.
3 One signature was required to withdraw or-disburse funds from
4 this account.

5 14.

6 On or about September 12, 2007, the Department
7 completed its examination of Respondent PHELAN ESCROW's books and
8 records pertaining to the real estate activities described in
9 Paragraphs 3 and 4 above, covering a period from approximately
10 April 1, 2005 to July 31, 2007. The primary purpose of the
11 examination was to determine Respondent's compliance with the
12 Real Estate Law. The examination, Audit No. LA 070016 revealed
13 violations of the Code and Regulations, as set forth below and as
14 more specifically set forth in the Audit Reports and Exhibits
15 attached thereto.
16

17 15.

18 In the course of activities described in Paragraphs 3
19 and 6 above, and during the examination period described in
20 Paragraph 14, Respondents acted in violation of the Code and the
21 Regulations in that:

22 a) As of July 31, 2007, there was a shortage in the
23 trust account of \$26,457.93, and the owners of the trust funds
24 did not give Respondents written consent to allow them to reduce
25 the balance of funds in the trust account to an amount less than
26 the aggregate trust fund liabilities. This shortage was due to
27

1 bank charges totaling \$17,715.35, a negative balance of accounts
2 totaling \$3,332.58, and conversion of trust funds totaling
3 \$5,410.00. There were also broker funds of \$15,000.00 in the
4 trust account, and unaccounted for funds of \$444.55. There was
5 no evidence in the files examined that the owners of the trust
6 funds had given Respondents written consent to allow Respondents
7 to reduce the balance of funds in the trust account to an amount
8 less than the aggregate trust fund liabilities. This mishandling
9 of trust funds was in violation of Code Section 10145 and
10 Regulations 2832.1, 2950(d) and 2951.

11 b) On April 11, 2007, Respondents deposited trust
12 funds in the amount of \$8,000.00 into their general business
13 account. On April 30, the balance in the general account was
14 \$662.24, on May 7, 2007, the balance in the general account was
15 \$572.85, on June 4, 2007, the balance in the general account was
16 \$308.90, and on July 27, 2007, the balance in the general account
17 was \$163.77. Funds were deposited back into the trust account on
18 June 6, 2007 (\$2590.00) and August 3, 2007 (\$5,410.00). In
19 addition, Respondent HOWELL kept \$15,000.00 of his own funds in
20 the trust account. Commingling and conversion of trust funds was
21 in violation of Code Sections 10145 and 10176(e), and Regulations
22 2835, 2950(d) and 2951.

23 c) The control records (Receipt Register, Check
24 Register and Wire Register) maintained of all the receipts and
25 disbursements of trust funds in connection with the broker escrow
26
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1 activity were inaccurate and incomplete. Some of the receipts
 2 deposited into the trust account and some of the disbursements
 3 made from the trust account were not recorded in the control
 4 records at all. In addition, some of the receipts and
 5 disbursements were not recorded correctly in the control records.

6 Examples included:

7 Receipts/Disbursements Not Recorded:

8 Amount	Date of Dep. Or Disbursemt.	Type of Trans.	Escrow No.
9 \$ 2,590.00	6/6/2007	Deposit	None
10 \$ 8,000.00	4/11/2007	Wire Out	None
11 \$ 2,450.00	7/19/2007	Wire Out	DM070351
12 \$200,090.81	5/31/2006	Wire in	DM060235

14 Dates of Receipts/Disbursements Not Recorded Correctly:

15 Amount	Date of Dep./ Disb.	Date Posted	Type	Escrow No.
16 \$ 1,000.00	4/4/2007	(7/31/2007)	Wire in	DM070320
17 \$ 83,901.53	1/30/2006	(2/6/2006)	Wire out	JP060217
18 \$ 13,000.00	1/31/2006	(2/6/2006)	Wire out	JP060217

19 Failure to maintain proper control records was in
 20 violation of Code Section 10145 and Regulations 2831, 2950(d) and
 21 2951.

22 d) The separate records of receipts and disbursements
 23 of trust funds for each beneficiary or transaction in connection
 24 with the escrow activity were inaccurate and incomplete.
 25
 26
 27

1 Examples include the transactions listed in subsection (c) above.

2 This was in violation of Code Section 10145 and Regulations
3 2831.1, 2950(d) and 2951.

4 e) Respondents failed to maintain a monthly
5 reconciliation of all the separate records to the control records
6 of all trust funds received and disbursed for the broker escrow
7 activity, in violation of Code Section 10145 and Regulations
8 2831.2, 2950(d) and 2951.

9 f) According to the bank signature card provided for
10 the trust account, at the time of the audit, the bank account was
11 not designated as a trust account, in violation of Code Section
12 10145 and 2832.

13 g) Respondents allowed Candance Howell (Respondent
14 HOWELL's wife), who was unlicensed and was not an employee of
15 Respondents, to be a signatory on the trust account. The
16 fidelity bond coverage was not adequate to cover the maximum
17 amount of trust funds to which the unlicensed, non-employee had
18 access at any given time. In addition, Respondent TUTTLE was not
19 a signer on the account during the time in which she was a
20 designated broker. These trust account violations were in
21 violation of Code section 10145 and Regulations 2834, 2950(d) and
22 2951.
23

24 h) Respondents engaged in an earnings credit
25 relationship with the bank whereby Respondents received bank
26 charge offsets on the basis of the deposit of escrow trust funds.
27

1 These profits were not disclosed to the owners of the trust
2 funds. Examples included an earnings credit of \$204.56 in April
3 of 2007, of \$93.36 in May of 2007, of 73.63 in June of 2007 and,
4 of \$51.31 in July of 2007. This secret profit was in violation
5 of Code Section 10176(g).

6 i) Respondents used the unlicensed fictitious business
7 name of "Phelan Escrow" in connection with the broker escrow
8 activity during the audit period without first obtaining a
9 license from the Department bearing that fictitious name, in
10 violation of Code Section 10159.5 and Regulation 2731.

11 j) Respondents failed to advise all parties in writing
12 of its ownership interest in the escrow division when the escrow
13 instructions were provided, in violation of Regulation 2950(h).

14 16.

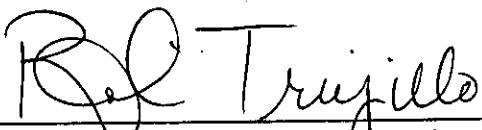
15 The conduct, acts and/or omissions of Respondents
16 PHELAN ESCROW, HOWELL and TUTTLE, as set forth in Paragraph 15
17 above, violated the Code and Regulations as follows:
18

19	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
20	15(a)	Code Section 10145 and 21 Regulations 2832.1, 2950(d) and 2951
22	15(b)	Code Sections 10145 and 23 10176(e) and Regulations 2835, 2950(d) and 2951
24	15(c)	Code Section 10145 and 25 Regulations 2831.1, 2950(d) and 2951
26	15(d)	Code Section 10145 and 27 Regulations 2831.1,

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 PHELAN FINANCIAL SERVICES INC., Respondent PHELAN ESCROW, INC.,
6 Respondent DOYLE CLINTON HOWELL, JR. and Respondent ELIZABETH
7 TUTTLE under the Real Estate Law and for such other and further
8 relief as may be proper under applicable provisions of law.

9 Dated at Los Angeles, California

10 this 6 day of August, 2008.

11
12
13 
14 Deputy Real Estate Commissioner

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22
23 cc: Phelan Financial Services, Inc.
24 Phelan Escrow, Inc.
25 Doyle Clinton Howell, Jr.
26 Elizabeth Tuttle
27 Sacto.
Robin Trujillo
L.A. Audits (Wanis)